

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council
Date of Meeting:	April 5, 2005
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Public Business)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:01 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmember Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the agenda:

1. Conference with Labor Negotiator

(Pursuant to Government Code Section 54957.6)

Agency designated representatives: Art Hartinger and Eddie Kreisberg

Employee Organizations: Protech, MEA, MSA, LIUNA, MPOA, IAFF, and
Unrepresented employees

Mayor Esteves adjourned the meeting to closed session at 6:02 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers, Livengood, Polanski and Giordano present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of March 1, 2005, and March 15, 2005, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

Councilmember Livengood announced that the VTA would be holding its annual workshop from 8:30 a.m. to noon on April 22 at the Hyatt on North First Street near Highway 101.

MOTION to approve the Schedule of Meetings.

M/S: Gomez, Livengood.

Ayes: 5

PRESENTATIONS

Proclamations:

Mayor Esteves read a proclamation stating the month of April has been designated as National Month of the Young Child and National Child Abuse Prevention Month in Milpitas in order to publicly recognize early childhood educators to increase awareness of child abuse and neglect issues, and to celebrate the wonder of young children and families. He encouraged the community to observe this month by taking action to make Milpitas a community in which all children grow and thrive. He presented the proclamation to Christine Rodriguez, Milpitas Pre-School Coordinator, and Toby Librande, Milpitas Child Care Coordinator.

Christine Anaya, Milpitas Preschool Coordinator, gave a presentation on child abuse and presented the Children's Welfare League of America Children's Memorial Flag held by Khullat Munir, Milpitas Youth Advisory Commissioner, and Shari Joseph, a Milpitas resident. She invited Amber Cox to the podium to read a poem she wrote entitled "One Step at A

Time". Ms. Anaya advocated for safe and healthy homes for children and discussed neglect and abuse. She encouraged parents to take parenting classes and read child development books to become aware of their children's needs. She thanked the community for their active support and noted the Resources Guide card that was handed out and recommended the Community Center as an additional resource.

Mayor Esteves proclaimed the month of April 2005 as Fair Housing Month in the City of Milpitas and read the proclamation. He encouraged citizens and community organizations to celebrate the value of diverse and harmonious community of neighbors and join him in recognizing the formation of the Countywide Fair Housing Task Force to promote equal housing opportunity. The proclamation was accepted by Felix Reliford, Milpitas Housing and Neighborhood Preservation Manager, and Gloria Anaya, Senior Housing and Neighborhood Preservation Specialist.

Mayor Esteves recognized Jim Burns for his dedication and service to the City of Milpitas older adult population as well as his service on the Milpitas Senior Advisory Commission, the development of the Milpitas Senior Center, and the Senior Needs Assessment Study subcommittee. He read the proclamation and presented it to Mr. Burns. Mr. Burns thanked the present and past Council, Mayor Esteves, and the Senior Advisory Commission.

Mayor Esteves proclaimed the week of April 10 to 15, 2005, as Dispatchers Week in Milpitas in recognition of the vital role Public Safety Dispatchers play in the protection of human life and property and the preservation of law and order. He read the proclamation and presented it to Dan Palmer, Milpitas 2004 Dispatcher of the Year. Councilmember Livengood recognized Mr. Palmer as a volunteer reserve Police Officer.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less. There were no comments.

ANNOUNCEMENTS

Councilmember Polanski thanked the Chamber of Commerce for hosting the State of the City event and the community members who participated, and commended the Mayor for his speech. She further announced she attended the DARE graduation.

Mayor Esteves announced that all City flags are at half mast in honor and respect of the passing of Pope John Paul II. He further announced he attended the opening of the Phantom Art Gallery and invited the public to come by the Community Center. He congratulated graduates of the DARE program.

ANNOUNCEMENT OF CONFLICT OF INTEREST

City Attorney Mattas inquired if any member of the City Council had a Conflict of Interest to disclose it for the record. Councilmember Livengood stated he would be abstaining from items 4, 19 and 21 due to a potential conflict of interest.

Councilmember Giordano stated she was informed by the City Attorney that she had a potential conflict on item number 2. She stated she is not in agreement with that opinion and requested a written opinion from the City Attorney. She requested that Item number 2 be continued to the next Council meeting on April 19, 2005. It was the consensus of the Council to move item number 2 to April 19, 2005.

MOMENTS OF REFLECTION There were no comments.

APPROVAL OF AGENDA

City Manager Lawson requested item 7A. be added to the agenda to Introduce Ordinance 265.1 rescinding Chapter 40 of Title I, Ethics Evaluation Panel, in its entirety from the Milpitas Municipal Code.

Councilmember Giordano requested item 2 be removed from the agenda.

MOTION to approve the agenda, including adding supplemental agenda item 7A, and removing item 2.

M/S: Giordano/Livengood

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

Vice Mayor Gomez requested items 8 and number 11 be added to the Consent Calendar.

Mayor Esteves requested that item 10 be removed from the Consent Calendar.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, in accordance with the staff recommendations, and adding items 8 and item 11 and removing item 10.

M/S: Gomez, Polanski.

Ayes: 5

***6.**

Odor Control Plan Update

Noted receipt and filed progress report.

***8.**

**Extend Sister City
Relationship: Dagupan City,
Philippines**

Approved the Sister Cities Commission's recommendation to extend the Sister Cities Relationship with Dagupan, Philippines, for two years. Authorized Mayor Esteves to sign an updated version of the existing MOU recognizing the extension between Milpitas and Dagupan at a later date for forwarding to City of Dagupan Mayor Benjamin Lim.

***9**

**Approve Budget Request from
Sister Cities Commission**

Approved expenses for the Huishou City April 2005 cultural and student exchange from the Council's Community Promotions budget. Authorized the City Manager to execute invoices not-to-exceed \$1,950.

***11.**

**Below Market Rate Units for
Unified School District.**

Approved the allocation of ten (10) below market rate affordable housing units for Milpitas Unified School District teachers in the Parc Place Development.

***13.**

Undulator Survey Results

Noted, Received and Filed Report on Undulator Survey Results for Mt. Diablo Avenue & Portola Drive Neighborhood. The installations of undulators are not recommended for these streets.

***14.**

Dispose of Fire Engine

Approved the request to auction Engine No. 38

***15.**

**Payment Options for Milpitas
Sports Center Members**

Approved recommended additional monthly and annual fitness packages for Milpitas Sports Center effective May 1, 2005. Approved the Parks, Recreation and Cultural Resources recommendation to amend the non-resident fee structure for new monthly and annual unlimited use passes to add 10% above resident fees and remove the annual fee of \$25.00.

***16.**

Dispose of Surplus Stairmaster

Approved the request to auction the Stairmaster 5600.

***18.**

**Resolution for Interim Senior
Center Site Improvements**

Adopted resolution granting final acceptance and release of the contractor/s bond.

***19.**

**Adopt Resolution for Local
Goals and Policies for**

Adopted a Resolution of the City Council of the City of Milpitas Adopting Local Goals and Policies for Community Facilities Districts. Adopted a Resolution of the City

Community Facilities Districts and Levy of Special Taxes	Council of the City of Milpitas Declaring Its Intention to Establish a Community Facilities District and to Authorize the Levy of Special Taxes Pursuant to the Mello-Roos Community Facilities Act of 1982.
*20. Execute Cost Sharing Agreement with County of Santa Clara	Authorized City Manager to enter into a cost sharing agreement with the County of Santa Clara, in a not-to-exceed amount of \$62,500. Authorized the City Engineer to execute the Contract Change Order for OC Jones & Sons in the amount of \$146,524.25. Approved a budget appropriation in the amount of \$62,500 from County funds into project 4170.
*21. Agreement Amendment and Budget Appropriation: Able Street	Authorized the City Manager to execute the Agreement Amendment with JMH Weiss in the amount of \$45,000 subject to approval as to form by the City Attorney. Approved Budget appropriation in the amount of \$80,000 from RDA Bond Proceeds.
*22. Second Amendment to the Agency for Hazardous Waste Collection	Authorized the City Manager to execute the Second Amendment to the Countywide Household Hazardous Waste Collection agreement with the Santa Clara County Department of Environmental Health, subject to approval as to form by the City Attorney.
*23. Amend Master Services Agreement to Increase Contract by #3000	Authorized the Interim City Manager to approve the 1st Amendment to the Master Service Agreement between Peelle Technologies and the City of Milpitas increasing the agreement by \$3,000 for a total amount not to exceed \$44,000.
*24. Approve Agreement for Annual Hardware, Software and Support	Authorized the City Manager to approve a Maintenance Agreement between the City of Milpitas and NetVersant for hardware, software and support services for the City's Octel 250 Voicemail system through April 4, 2008 in an amount not to exceed \$18,000 subject to approval as to form by the City Attorney.
*25. Execute Agreement Brian Kangas Foulk Engineers	Authorized City Manager to execute an agreement with Brian Kangas Foulk Engineers, for the amount of \$733,371, subject to approval as to form by the City Attorney. Approved budget appropriation Project Project No. 8165 in the amount of \$150,00 from RDA Bond proceeds.
*26. Construct Contract, Utility Relocation Project	Awarded Construction Contract to Pacific Underground Construction in the amount of \$671,164, which includes the base bid and three add alternate bids items.
*27. Contract for Interim Janitorial Service	Authorized the City Manager to execute a contract with Empire Maintenance Services to perform interim Janitorial Service for ninety (90) days in an amount not to exceed \$33,840.00 including tax, subject to approval as to form by the City Attorney.
*28. Agreement with Meyers-Nave to Provide Labor Negotiation Services	Approved the agreement with Meyers Nave for labor negotiation services and a purchase order for \$70,000 to Meyers Nave.
*29 Payment Requests – Miscellaneous Vendors/Contractors	Approved the purchase requests.

***30.**

Purchase of Tropos Wireless Network Equipment

Approved the purchase of Tropos Wireless Network equipment as per attached quote #SQ Milpitas 031420052 to Tropos Networks for \$31,229.47.

PUBLIC HEARINGS

1.

Local Hazard Mitigation

Americo Silvi, Battalion Chief/OES, assisted by George Washburn, Emergency Services Coordinator, presented the staff report. He reported the Federal Disaster Mitigation Act of 2000 established a Pre-Disaster Mitigation Grant Program to provide funding to local governments to aid in the implementation of pre-disaster hazard mitigation projects. The City of Milpitas must create a Local Hazard Mitigation plan by resolution in order to be eligible to receive these funds. He further reported that ABAG received a grant from FEMA to create a multi-jurisdictional LHMP for adoption and provided the Council with a copy of the local hazard mitigation plan from ABAG. He stated that Milpitas has two pending grants at this time – the water pipeline replacement and the large gym retrofit, and there are deadlines to receive the grant.

Mayor Esteves asked for a summary of the impact of the local hazard mitigation plan for the benefit of the public.

Councilmember Giordano asked for clarification of the flooding program costs, if a plan was going through FEMA, and what programs were being implemented in Milpitas.

MOTION: To close the Public Hearing

M/S Gomez, Giordano Ayes: 5

MOTION: Adopt a resolution approving the Local Hazard Mitigation Plan.

M/S Gomez/Polanski Ayes: 5

2.

Enhance Code Enforcement Program

Continued to the April 19, 2005 Council meeting.

3.

Conceptual Transit Subarea

Tambri Heyden, Planning and Neighborhood Services Director, introduced the item and provided the Council with a handout with more detail than what was included in their packet. She stated this has been a collaborative effort involving staff, consultants, community members and stakeholders. She stated if implemented it would strengthen economic development of the area, strengthen retail uses, attract major retailers and provide housing and amenities such as parks, schools, retail and restaurants. She further stated the study would foster the needs of the Valley Transportation Authority by increasing ridership, locating housing near transit and providing higher density housing to maximize the capital investment in light rail and rapid transit facilities.

She introduced Leslie Gould of Dyett & Bhatin, who presented a Power Point presentation that covered vision and goals, transit area concept plans for McCandless, Montague Expressway, and Piper/Montague, key issues, the Great Mall/Montague, alternative policy choices, and Montague/Trade Zone.

Vice Mayor Gomez inquired about industrial use zoning.

Mayor Esteves inquired about the BART station area and location of the BART terminal.

Councilmember Livengood inquired about the concept plan and the alternative plan and what the differences are. He asked why staff is recommending the changes and expressed

concern that there not be a preference, but to move both plans ahead. He further inquired about the sewer capacity. He expressed concern about the expense of buying more sewer capacity and inquired when the information will be available. He asked for clarification of the parcels east of Milpitas Boulevard as a border for the transit plan.

Councilmember Giordano inquired about the rationale behind the boundaries near Great Mall Parkway.

Ed Conners, a member of the public, expressed concern about BART and advocated for a new system to alleviate the traffic other than BART.

Joan Gallo, of Hopkins and Carley, stated she is representing Brookwood Montequ Technology Park Investors and requested an environmental review of the nine acre parcel in the Transit Subarea Plan at the southeast corner of Montague and Trade Zone Boulevard. She further requested notification of future meetings in regard to the Transit Subarea Plan.

A member of the public (no name given) spoke for Mr. Raoul Dedeaux of Dart Transportation. He expressed concern regarding extra streets south of Capitol and east of Montague and the proposed retail and residential densities.

Yvonne (name eligible), a member of the public, stated she was speaking for Stan Hertzstein, a property owner in the transit subearea plan. She complimented staff and expressed concerns that the VTA does not get ahead of the City and requested citizens be part of the plan.

Don Peoples, a member of the Economic Development Commission but speaking as a member of the public, stated this was a good plan and encouraged the Council to adopt it. He requested the midtown plan be reviewed for weaknesses. He expressed surprise that Bart would recommend an overhead.

Myran Crawford, a member of the public, stated he was speaking for Mr. Berg, a real estate developer. He expressed concerns relating to the amount of retail, and would like to reduce the density of residential properties. He suggested having the residential mixed with the retail. Mayor Esteves requested if there were further comments, to address them in a letter to staff.

Jim Murar, of GGC investments, stated they are in favor of the concept plan and are completing their detailed plans for submittal. He urged the Council to approve the plan.

MOTION: To Close the Public Hearing

M/S Giordano/Gomez

Ayes: 5

MOTION: Approve the Phase I Transit Subarea Concept Plan and Alternative Concept Plan Plan. Direct staff to initiate Phase II of the Transit Subarea Plan in fiscal year '05-'06 with the two alternatives: The Concept Plan and the Alternative Policy Concept Plan.

M/S Livengood/Giordano

Ayes: 5

Vice Mayor Gomez requested that item number 12 be the next item. It was the consensus of the Council to move item 12 up in the agenda.

**12.
Chamber of Commerce
Budget Request**

Cindy Maxwell, Principal Administrative Analyst in the Office of the City Manager, presented the staff report. She reported the Milpitas Chamber of Commerce has submitted a budget funding request for FY05-06 for an additional \$21,700 to provide additional services to the City for Visitor Bureau activities and a Retail Promotion Program.

Councilmember Livengood questioned why this item was on the agenda as it was a budget item and how long ago the \$20,000 request was made.

Gaye Morando, Executive Director of the Milpitas Chamber of Commerce, responded to questions from Councilmember Polanski regarding the benefits of a Visitors Bureau and the Retail Promotion Program. Councilmember Polanski further inquired how many people contact the Chamber for information about the City.

Mayor Esteves posed questions regarding Chamber sites and if they would be sufficient.

Tom Valore, Chief Financial Officer of the Milpitas Chamber of Commerce, stated the Visitors Bureau already exists and the funds they are asking for are to provide additional financial resources.

Councilmember Livengood stated that he believes the Chamber should receive additional funding. He stated he would like to see a multi-faceted plan and to project out required funding so the City could provide gradual funding increases. He stated he would like to see the Retail Promotion Program come back and would support additional funding during the budget hearing.

Vice Mayor Gomez inquired if the Chamber was getting the budgeted \$10,000. He stated this should be reviewed during the budget hearing while looking at the big picture.

Councilmember Polanski spoke in support of a multi year plan and acknowledged the benefits the Chamber provides to the City. She further stated this should come back during the budget hearing.

Councilmember Giordano acknowledged the need for additional funding but stated she is hesitant to grant the entire amount requested, but would review it at the budget hearing.

Mayor Esteves stated he is seriously considering the request and recognized the Chamber's value to the City and their budget needs.

MOTION: To move this item to the Budget Hearing, have staff prepare a report for Council consideration, and do not include the invoice system.

M/S Livengood/Polanski

Ayes: 5

UNFINISHED BUSINESS

4. Design for Historical Elm Tree Display

Troy Fujimoto, Assistant Planner, presented the staff report. He reported that previously he had submitted three concepts. He introduced the consultant, Kevin Levesque or Randall Planning. Mr. Levesque reviewed concept D noting that they reviewed how to best memorialize the elm trees. He stated the plan includes tables that are made from existing plan trees, lighting of the trees and a straight path through the tree grove.

Councilmember Polanski stated she is pleased with the furniture and expressed concern about the visibility of the plaques in the ground. She stated she visualized a larger monument that was more visible and descriptive. She inquired if the Parks, Recreation and Cultural Resources Commission had reviewed the plan.

Mayor Esteves requested a vertical plaque/monument be installed at both entrances into the alley of trees, that the furniture be treated for protection from the elements, and that the ground mounted plaques be bigger, a minimum of two feet wide.

MOTION: Approve Concept D with the following amendments: A vertical plaque/monument be installed at both entrances into the alley of trees, the outdoor furniture be treated for protection from the elements, and bigger ground mounted plaques be used (minimum of 2 feet wide).

M/S Giordano/Gomez

Ayes: 4 Abstain: Livengood

**5.
Public Access Ordinance**

Richard Pio Roda, Acting City Attorney, presented the staff report. He stated this is the adoption of Ordinance No. 262.1 and that all the comments have been incorporated since the March 15 meeting. He recapped the changes and availed himself for questions.

Vice Mayor Gomez requested that Section I-310-2.140(f) be removed from the ordinance..

Councilmember Polanski stated she requested this be removed from the Consent Calendar at the last meeting so she could explain why she would be voting against the ordinance. She stated she believes these changes could have been accomplished by amending the current open government ordinance. She stated that the lobbyists ordinance recommendations by the Community Advisory Commission were much stronger and have not been incorporated, and objects to eliminating City Council members serving in volunteer positions such as police reserves and senior volunteers.

Mayor Esteves stated he would also be voting against the ordinance because of concerns about the impact of the ordinance, the timelines and cost for public records requests, and the lobbyists portion not being adequate.

Acting City Attorney Pio Roda read the title of the ordinance.

MOTION: To waive the reading beyond the title for Ordinance No. 262.1

M/S Gomez/Livengood

Ayes: 5

MOTION: Adopt Ordinance No. 262.1 (1) repealing Chapter 310 of the Municipal Code; (2) repealing Chapter 320 of the Municipal Code; and (3) introducing Ordinance 262.1, Adding Chapter 310 to Title I of the Milpitas Municipal Code Establishing Regulations Governing Access to Public Meetings and Public Records, Designating City Employee Salary Information by Title as a Public Record, Regulating Lobbyists' Activities and Solicitation of Donations by Public Officials and Establishing an Open Government Commission ("Milpitas Open Government Ordinance") and remove Section I.310-2.14(f)

M/S Gomez/Livengood

Ayes: 3

Noes: 2 (Esteves, Polanski)

Mayor Esteves declared a break at 9:12 p.m. and reconvened at 9:22 p.m.

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council at 9:23 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Livengood, Giordano and Polanski

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of March 1, 2005 and March 15, 2005, including joint meetings with the City Council, as submitted.

M/S Polanski/Giordano

Ayes: 5

**RA4.
AGENDA**

MOTION to approve the Agenda as submitted

M/S Gomez/Giordano

Ayes: 5

**RA5.
ALLOCATION OF FUNDS**

Felix Reliford, Housing and Neighborhood Preservation Manager, presented the staff report. He stated the Housing Trust Fund and Silicon Valley Leadership Group announced the proposal for Phase III to provide additional affordable housing within Santa Clara County. He reported the City previously contributed \$500,000 for the Housing Trust Fund and staff is currently negotiating to contribute funds to this project. He stated the Housing Trust Fund is requesting contributions from the private and public sector for \$150,000. He introduced Carl Guardino, President of the Silicon Valley Leadership Group, who gave a brief presentation on the Housing Trust and asked for consideration of the staff recommendation. He provided a handout to of the March 1 update to the Council.

Ray Hines, of Solectron, reported that Solectron is the first private sector contributor to the Housing Trust and recognizes the importance of providing affordable housing. He reported that Solectron has contributed \$100,000 to Phase III and encouraged donations from the public and private sector.

MOTION to approve budget appropriate of \$150,000 of Housing Reserve Funds for payment to the housing Trust Fund of Santa Clara County. Adopt a resolution demonstrating a compelling need to prefer Milpitas residents and workers for housing units using Housing Reserve Funds contributed to the Housing Trust Fund of Santa Clara County.

M/S Livengood/Giordano

Ayes: 5

**RA6.
LIBRARY DESIGN**

Mark Rogge, Principal Engineer, presented the staff report. He reported the design was approved by the Library Subcommittee. He stated the plans have been reviewed for code compliance and have been reviewed with the County. He stated Group 4 was tasked with making sure the plans were of architectural excellence, way finding, energy efficiency and operational efficiency. He stated they will stay within the cost plan and the next steps will be to complete the schematic design report and begin the design development. Mr. Rogge introduced Dawn Merkes and David Schnee of Group 4 who presented a Power Point presentation that reviewed the details of the proposed library schematic design of the floor plan and the exterior design.

Councilmember Polanski inquired about the air flow and expressed concern that the air flow not be placed directly over where people sit.

MOTION to note receipt and file progress report on library design. Approve the Library schematic design as shown in the presentation and recommended by the Library subcommittee.

M/S Polanski/Livengood

Ayes: 5

**RA.7
CONSULTING SERVICES
AGREEMENT**

Mark Rogge, Principal Engineer, presented the staff report. He stated two new parking garages are proposed to serve the development of North Main Street in the Midtown area. He presented a Power Point presentation giving a brief overview of the east and west parking garages agenda, garage design, contract with Chong Partners, cost control program, scope of work, schedule (going out to bid on March 6), and design fee. Mr. Rogge stated they would be returning to the Council once they finalize their cost plan to fund the rest of the project. He introduced Gordon Chong and Geoff Adams of Chong Partners, who gave a presentation about their company. Mr. Chong stated that all their clients are public agencies and they have had a lot of experience in design and revenue control. He displayed photos of other parking garages they have designed.

Mayor Esteves requested that if the Council agrees, that the west garage be designed so that it could sustain a banquet facility later on.

Councilmember Livengood inquired how the Campbell garage compares to the proposed Milpitas garages in size and budget.

Councilmember Giordano noted the departure of four partners and inquired about the stability of the company and how many partners they currently have.

City Manager Lawson asked what the average size is of an architectural firm and noted that Chong Partners was a large firm.

Mayor Esteves inquired if Chong Partners had a set team for the project and what expertise they lost with the departure of the four partners.

MOTION Authorize the City Manager to execute the agreement with Chong Partners Architecture for the Midtown East & West Parking Garages subject to approval as to form by the City Attorney. Approve a new CIP for the Midtown West Parking Garage and an initial budget appropriation for the project in the amount of \$1.3 million from RDA tax increment, to be reimbursed by the County, as well as insure the design includes the capability to add on in the future.

M/S Polanski/Livengood

Ayes: 5

ADJOURNMENT

There being no further Redevelopment Agency Business, Mayor Esteves adjourned the Redevelopment Agency meeting at 10:20 p.m.

REPORTS OF OFFICERS AND BOARDS

City Council

7.

Regional Medical Center

Councilmember Livengood presented the report. He stated there is a very serious issue before Santa Clara County with the designation of an additional trauma center for Santa Clara County. He noted that the County has been operating with two trauma centers following the closure of San Jose Medical Center, and stressed the importance of the services they provide. He stated that Milpitas is now divided in half by Highway 237/Calaveras Boulevard and trauma patients are divided going to both Sanford Medical Center and Valley Medical Center. He stated the solution is a third trauma center at the Regional Medical Center that is closest to Milpitas. He requested that the Council send a letter to the Board asking them to designate Regional Medical Center as a third Trauma Center in the County.

MOTION: Request the Santa Clara County Board of Supervisors Designate Regional Medical Center as a Third Trauma Center in the County.

M/S Giordano/Livengood

Ayes: 5

**7.A.
Ethics Evaluation Panel**

Vice Mayor Gomez presented the report. He stated this Ethics Panel was not working and that the City is in the middle of this process and being used as a tool. He stated the City should move away from this. He noted that the consultants had advised against this panel and that commissioners and Councilmembers should be able to sit down and work concerns out without a panel. He further noted that San Jose and Santa Clara County tried to use this type of system and it did not work out. He stated there have been inconsistencies with the decisions and the public is losing faith in the system, and he would like to explore a censure policy instead of an Ethics Panel.

Councilmember Polanski expressed disappointment that the supplemental agenda item was received with such short notice. She stated that a lot of effort was put into establishing the Ethics Panel and has not heard any complaints from citizens regarding the Panel. She noted the Panel has only been in use for a few months and a citizen survey on Ethics Panel was never done. She advocated for this go to the Community Advisory Commission for their consideration before Council makes a decision and noted there are some ethics complaints that have not been heard yet. She stated the budget for the Ethics Panel should be considered at the budget hearing and that since an open government ordinance has been passed, the City should receive input from the public.

Mayor Esteves stated he valued the Code of Ethics and supports the Ethics Panel. He stated this forum provided the opportunity for people to rethink their opinion and eliminate politics from decisions for the benefit of the public. He stated this process helps elected and appointed officials to see the impact of their actions and helps promote honesty and stewardship. He stated he has received positive comments from the public, would like input from the community, and felt this was a good experience for the community and officials.

Vice Mayor Gomez clarified that his proposal does not rescind the Ethics Code and that commissioners are accountable to the Council, that senior staff is accountable to the City Manager, and Councilmembers are accountable to their colleagues and the voters. He reiterated his concern with the inconsistencies of the decisions by the Ethics Panel and the impact on people's reputation.

Councilmember Polanski noted that the Council had tabled the final report from the consultants on ethics because of the amount of time needed for discussion, and the Council has not had the opportunity to discuss the report to see what the recommendations are. She stated that part of the Ethics Program was education of the public and expressed concern about how campaigns are run. She stated she disagrees with Vice Mayor Gomez's opinion regarding that the Ethics Panel is destroying reputations and has not been fair.

Councilmember Giordano stated she has received public input regarding the Ethics Panel and would like the opportunity to study this further.

Jennifer Lind, representing the Community Advisory Commission, stated that the Commission has not had the opportunity to discuss the removal of the Ethics Panel. She stated the Panel was established based on public input so that when the code was not being followed there would be consequences. She stated it gives people a chance to have a means of recourse and educates the community. She opined that the community needs a recognized and organized systems to hold people accountable and avoid gossip. She requested that the Council wait until they have had a chance to review the report from Dr Shanks.

Al Garcia, a member of the Planning Commission but speaking as a member of the public, expressed his opposition to removing the Ethics Panel. He noted the efforts that went into creating the Panel and that it was approved by the Council. He opined that the panel is

effective and shared his personal experience with the Ethics Panel. He noted the Panel has been in effect for a short period of time and requested that the Council to keep the Panel.

Craig Ranker, a member of the Community Advisory Commission but speaking as a member of the public, stated he has been involved with the Ethics Panel as a member of the Community Advisory Commission and stated the Ethics Panel has had a positive effect to civic behavior. He stated the process should be given a chance to work and encouraged the Council to keep the Ethics Evaluation Panel.

Phillip Riley, a member of the Ethics Panel, noted that the ordinance calls for the panel to provide a report to the Council each year. He stated that he has two binders already and said it might make sense to wait until the Council has the opportunity to review the information in the binder. He further stated that accountability is a crucial word and the role of a panel to represent both sides is an important function of accountability. He stated the panel is a place where people on different sides can come together and helps the public learn about the Ethics Code and it has been an honor to serve on the Ethics Panel.

Ray Magalang, a member of the Economic Development Commission but speaking as a member of the public, stated it was too early to remove the Ethics Panel. He advocated to get the opinion of the Santa Clara State University Center of Ethics to judge if the panel is being effective. He requested that the Council give the Panel more time before voting to remove it.

Tom Shanks, a member of the public, reminded the Council that the Ethics Panel was established from community input. He stated the survey that was sent to the community received the highest input on the question about the consequences of violating the Ethics Code and noted that 66% of the respondents ranked this as a 5 (highest) and 83% as a 4 or a five. He stated there is a need to have a group of professionals who can determine if there has been a violation and then make a timely decision.

Councilmember Livengood stated he recognized both the advantages and disadvantages of the Ethics Panel but felt the Panel did not produce the kind of results he was looking for and would be supporting the motion. He clarified that he was in support of removing the Ethics Panel but not the Ethics Code and if the motion passes, he would like to take another look at how to enforce the Ethics Code in the City.

Mayor Esteves stated that the Panel is a major part of the Code of Ethics and that it gives people the opportunity to rethink their actions and is a means of enforcing the code.

Isaac Hughes, a member of the public, directed comments to the Council regarding business licenses

MOTION: Waive the reading beyond the Title.

M/S Gomez/Livengood

Ayes: 5

MOTION to introduce Ordinance 265.1 rescinding Chapter 40, Title I, "Ethics Evaluation Panel," in its entirety from the Milpitas Municipal Code.

M/S Gomez/Livengood

Ayes: 3 Noes: Esteves, Polanski

NEW BUSINESS

10.

Open Government Commission

Continued to the April 19, 2005 Council meeting.

ORDINANCES

17.

Animal Regulation
Administrator's Decision

Continued to April 19, 2005 Council meeting.

ADJOURNMENT

It was the consensus of the Council to continue the remaining items to the April 19, 2005 meeting. Mayor Esteves adjourned the City Council meeting at 11:06 p.m.

Respectfully submitted,
Donna Biles, Deputy City Clerk

The foregoing minutes were approved by the City Council with amendments on April 19, 2005.

Donna Biles

Date